

**DEPARTMENT OF STATE REVENUE**  
**LETTERS OF FINDINGS NUMBER 98-0004 & 98-0177**  
**CORPORATE INCOME TAX**  
**FOR TAX PERIODS: 1993-1994**

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**ISSUES**

**1. CORPORATE INCOME TAX: Consolidated Return**

**Authority:** IC 6-2.1-5-5, IC 6-3-4-14, 45 IAC 3.1-1-110, 45 IAC 1-1-164.

Taxpayers protest the deconsolidation of their gross income tax returns.

**Statement Of Facts**

Taxpayers are interexchange (long distance) telecommunications carriers which conduct business in Indiana and other states. They are affiliated with several other similar companies. In 1976 the primary Taxpayer elected to file a consolidated return with its Indiana affiliates. Over the years the primary Taxpayer has acquired additional Indiana affiliates including the other Taxpayer. The primary Taxpayer failed to include these new affiliates in its Indiana consolidated group. In the audit, Taxpayers' consolidated return was disallowed and tax was computed based upon individual returns of each affiliate. Taxpayers protest the deconsolidation of its tax return.

**1. CORPORATE INCOME TAX: Consolidated Return**

**Discussion**

For purposes of gross income tax, affiliated corporations can file consolidated tax returns pursuant to IC 6-2.1-5-5 (d) as follows:

An affiliated group must elect at the time it files its first annual return whether or not it will file a consolidated gross income

tax return or whether each corporate member of the group will file a separate gross income tax return. After this election is made, the group must file gross income tax returns in the same manner as the group's first annual return is filed, unless the department allows the group to change the manner in which it files gross income tax returns.

IC 6-3-4-14(a) provides similarly for the filing of consolidated returns for adjusted gross income taxes. These statutes are clarified by Indiana Regulations found at 45 IAC 3.1-1-110 and 45 IAC 1-1-164. In general, these regulations allow members of an affiliated group conducting business in Indiana to elect consolidated return filing and provide for deconsolidation only upon application to and approval by the Indiana Department of Revenue.

In this situation, the primary Taxpayer elected to file consolidated returns and continued to file consolidated returns as required by the law and regulations. However, the primary Taxpayer failed to include its new affiliates with Indiana source income in their consolidated group. The auditor's remedy for this error was to deconsolidate the returns and compute the tax liability based upon the separate returns of each of the affiliates. At no time did Taxpayers apply for permission to deconsolidate the returns or receive Indiana Department of Revenue approval to deconsolidate the returns. Therefore, Taxpayers' consolidated returns do not meet the requirements for deconsolidation. The appropriate remedy for the primary Taxpayer's failure to include its new affiliated corporation would have been to require the inclusion of all Indiana affiliated group members in the consolidated return.

### **Finding**

Taxpayers' protests are sustained.